

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
)
WILLIAM BRUCE WACHTER) MM Docket No. 95-121
) RM-8660
Amendment of Section 73.202(b))
Table of FM Allotments)
to Allot Channel 251A to)
Dearing, Kansas)

TO: Chief, Allocations Branch

REPLY COMMENTS OF WILLIAM BRUCE WACHTER

William Bruce Wachter ("Wachter"), by his attorney, hereby files the following Reply Comments to the Comments filed in this proceeding by KGGF-KUSN, Inc. ("KGGF"), as follows:

1. In its Comments, KGGF contends that Dearing, Kansas, is not a community for allotment purposes. KGGF's argument is based on the contention that Dearing is too small and has insufficient local institutions.

2. In the first place, KGGF is simply wrong about the existence of local institutions in Dearing. It has three churches: Dearing Christian, United Methodist and First Southern Baptist. It has a local volunteer fire department, with trucks housed in a building on the main highway through Dearing. Dearing has a post office. Additionally, besides the businesses mentioned in KGGF's Comments, Dearing has three beauty shops, a car wash, an automobile detailing and repair business, and a heating and air conditioning

business.

3. Even more important, Dearing is incorporated. The Commission has specifically held that incorporated communities qualify as communities for allotment purposes. In FM Channel Assignments, (Willows and Dunnigan, California), 9 FCC Rcd 1802 (1994), the Allocations Branch wrote that:

"Section 307(b) of the Commission's Rules of 1934, as amended, requires that channel allotments be distributed fairly, efficiently and equitably . . . among the several States and communities. Communities are defined by the Commission as geographically identifiable population groupings. As a general rule, if a community is incorporated or is listed in the U.S. Census, that is sufficient to demonstrate its status as a community for allotment purposes." 9 FCC Rcd 1802 at ¶3.

To the same effect, see Table of FM Allotments (Cleveland, Mississippi), 1995 WL 490848 (Policy and Rules Division, Docket 93-100, released August 18, 1995).

4. At ¶4 of its Comments, KGGF cites a large number of cases for the proposition that "the Commission has refused to accord community status to locations that had a far more substantial population base than Dearing." With one exception, all of the cases which KGGF cites involve communities with populations ending with the figure zero.¹ When a community is listed in the Rand McNally Road Atlas, or some other publication, and it has a

¹The exception, East Hemet, CA, 7 FCC Rcd 3944 (1992), involved a place which was not an incorporated community, but which was, in 1980, a Census Designated Place. Between the time of the 1980 Census and the time of the 1990 Census, East Hemet lost its status as a Census Designated Place. Under those circumstances, which clearly have no relevance to the situation here, the allotment was deleted.

population ending with the figure zero, it generally denotes an unincorporated place, having an estimated population. Census Designated Places do not have estimated populations; they have exact population figures and, as a result, the population number generally does not end with a zero.

5. In this instance, Dearing is an incorporated community and is very much alive. Attached hereto and marked Exhibit A is an affidavit of the City Clerk of Dearing, describing the city government of the community; identifying the current mayor and councilpersons; and showing that the city council meets on a monthly basis.

6. KGGF has not cited any case where the Commission has denied community status to an active, incorporated place. The arguments advanced by KGGF that Census Designated Places and incorporated communities are mutually exclusive is simply a quibble. All incorporated communities are, necessarily, designated by the Census, because the Census always conducts an exact count of the number of residents living within an incorporated community. Here, the existence of an active city government in the City of Dearing is more than sufficient to qualify that community to receive an FM allotment.

7. Finally, as to the argument that Dearing is too small, the Commission has allotted FM channels to unincorporated communities with an estimated population of as little as 250 persons. Mountain Pass, California, 45 RR 2d 58 (1979). Dearing has a population of almost twice that amount, and it is also an

incorporated community, recognized by the Census. Clearly, it qualifies as a community for allocation purposes.

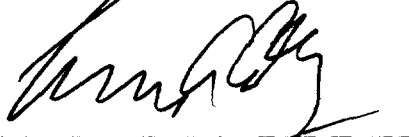
September 25, 1995

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Respectfully submitted,

WILLIAM BRUCE WACHTER

By:



Lauren A. Colby
His Attorney

EXHIBIT A

AFFIDAVIT

STATE OF KANSAS)
) ss
MONTGOMERY COUNTY)

I, PAT SMITH, City Clerk of the City of Dearing, Kansas,
hereby declare under penalty of the laws of perjury that the
following is true and correct:

1. That the City of Dearing, Kansas, is an incorporated city.

2. That the City of Dearing, Kansas, has a city government consisting of a Mayor and City Council, whose current members are as follows:

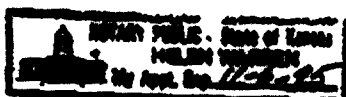
Mayor	Jack Akers
Councilman	Tommy Haymaker
Councilman	Brady Smith
Councilman	Larry Mersberg
Councilman	Bob Robbins
Councilwoman	Terri Bishop

3. That the City Council meets on a monthly basis and has jurisdiction over all aspects of city government.

Further, Affiant sayeth not.

PAT SMITH, CITY CLERK
CITY OF DEARING, KANSAS

Subscribed and sworn to before me this 22nd day of September, 1995.



NOTARY PUBLIC

My Appointment Expires:

Nov. 6, 1995

CERTIFICATE OF SERVICE

I, Traci Maust, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage prepaid, this 25th day of September, 1995, to the offices of the following:

Kathryn R. Schmeltzer, Atty.
Fisher, Wayland, Cooper, Leader & Zaragoza, LLP
2001 Pennsylvania Avenue, N.W.
Suite 400
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Traci Maust
Traci Maust